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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,697	03/01/2002	Richard Franz	D-2998	4890
33197	7590	04/17/2006	EXAMINER	
STOUT, UXA, BUYAN & MULLINS LLP 4 VENTURE, SUITE 300 IRVINE, CA 92618			SANDERS JR, JOHN R	
		ART UNIT	PAPER NUMBER	
		3735		

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SJP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/087,697	FRANZ ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	John R. Sanders	3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 34-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 34-50 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 April 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2 February 2006 has been entered.

### *Response to Arguments*

2. Applicant's arguments with respect to claims 34-50 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 34-38 and 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hosoi, of record.**

5. Re claims 34, 37-38, 41, 44: Hosoi discloses an eye examination telecommunication system comprising multiple remote exam modules 100, each with a plurality of different examination devices, that are remotely operated by a controller 3 located at a separate remote

Art Unit: 3735

module (col. 1, line 37 - col. 2, line 24). The plurality of different examination devices includes a subjective refractive power measuring device 2, a target chart presenting device 4, an objective refractive power measuring device 6, and a lens meter 7 (col. 2, lines 55-67). Hosoi discloses the diagnosis of refraction information as well of the use of a display screen to perform a visual acuity test, including determining information relating to astigmatism axis and degree (col. 5, lines 17-33), inherently including information regarding the topography of the cornea. The separate remote module acts as the practitioner's operating center and includes a database for storing test data and an exam console (col. 3, lines 20-26). Based upon the disclosed exam modules and their enablement of remote operation, Hosoi obviates a method of examining an eye at an examination location using a plurality of ophthalmic diagnostic devices and subsequently transmitting the results of said exam to a remote diagnostic center for diagnosis and prescription by a skilled practitioner.

6. Hosoi discloses the use of a printer for outputting the results of measurement at the remote diagnostic center (col. 6, lines 10-16). Hosoi does not expressly disclose the method step of providing a diagnosis and prescription to the patient prior to the patient leaving the exam module, yet it would be obvious to one of ordinary skill in the art that the printer disclosed by Hosoi could be used to provide the patient with a prescription, since obtaining a prescription of the patient is the express purpose of the exam modules disclosed by Hosoi and since it is common practice to provide a patient with the results of an eye examination prior to the patient leaving the exam site.

7. Re claim 35: Hosoi discloses displaying images corresponding to the transmitted eye examination data (paragraph bridging col. 5-6).

8.     *Re claim 36, 42 and 45:* Hosoi discloses real-time teleconferencing (col. 3, lines 52-55; col. 6: 41-50).
9.     *Re claim 43:* Hosoi discloses a public communication network **18**, which one of ordinary skill in the art would interpret as a local and/or external Internet connection.
10.    *Re claim 46:* Hosoi discloses transmission of objective and subjective test data (col. 5, lines 34-61).
11.    **Claims 39-40 and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hosoi in view of Kennedy, of record.**
12.    Hosoi discloses the above limitations but does not expressly disclose a questionnaire for patient history data or a touch-screen or voice recognition software for patient data entry. Hosoi also lacks a disclosure of web-based patient information database and retrieval.
13.    Kennedy discloses a system and method for eye screening (FIG. 7) wherein a remote exam module (composed of a device to record corneal and retinal reflections, a data entry device, and a control system) collects eye images from the patient. This information is transmitted to the central analysis facility via a communication link (col. 6, line 57 - col. 7, line 6). The central analysis facility comprises a record database and means for displaying the images for skilled specialists (col. 2, line 47- col. 3, line 10; col. 7, line 31- col. 8, line 11). Kennedy discloses creation and retrieval of examination records (col. 7, lines 14-21).
14.    Kennedy discloses remote data entry via a touch screen and/or voice recognition (col. 8, lines 12-38) and a questionnaire (col. 14, lines 2-5). Kennedy discloses posting relevant patient information on the web (col. 7, lines 2-6). At the time of the invention, it would have been

obvious to one of ordinary skill in the art to modify the exam modules of Hosoi to include a questionnaire and a touch screen or voice recognition unit, as taught by Kennedy, in order to collect patient information prior to an examination. It would further be obvious to one of ordinary skill in the art to modify Hosoi to include a remotely located and/or web-based patient database, as taught by Kennedy, in order for easily facilitated information retrieval from any Internet-enabled workstation in any remote location.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Sanders whose telephone number is (571) 272-4742. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRS  
5 April 2006

*Patricia Bianco*  
PATRICIA BIANCO  
PRIMARY EXAMINER

4/11/04